

1 SENATE BILL 149

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Cisco McSorley

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7
8 FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9
10 AN ACT

11 RELATING TO DNA IDENTIFICATION; PROVIDING THAT THE DNA
12 IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE SHALL DESIGNATE THE
13 LOCATION OF THE ADMINISTRATIVE CENTER AND APPROVE THE SELECTION
14 OF THE HEAD OF THE ADMINISTRATIVE CENTER; PROVIDING FOR
15 QUALIFICATIONS FOR THE HEAD OF THE ADMINISTRATIVE CENTER;
16 REQUIRING A WRITTEN AGREEMENT BETWEEN THE COMMITTEE AND THE LAW
17 ENFORCEMENT AGENCY WHERE THE ADMINISTRATIVE CENTER IS LOCATED;
18 PROVIDING FOR THE COLLECTION OF THE DNA FEE BY THE CORRECTIONS
19 DEPARTMENT; PROVIDING PROCEDURES FOR MONEY WITHDRAWN FROM THE
20 DNA IDENTIFICATION SYSTEM FUND; REQUIRING ACCOUNTABILITY FOR
21 EXPENDITURES FROM THE FUND; CLARIFYING DEFINITIONS IN THE DNA
22 IDENTIFICATION ACT.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. Section 29-16-3 NMSA 1978 (being Laws 1997,

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1 Chapter 105, Section 3, as amended) is amended to read:

2 "29-16-3. DEFINITIONS.--As used in the DNA Identification
3 Act:

4 A. "administrative center" means the part of a law
5 enforcement agency crime laboratory that participates in the
6 national DNA index system [~~qualified New Mexico crime~~
7 ~~laboratory~~] and that administers and operates the DNA
8 identification system;

9 B. "CODIS" means the federal bureau of
10 investigation's national DNA index system for storage and
11 exchange of DNA records submitted by forensic DNA laboratories;

12 C. "covered offender" means any person:
13 (1) convicted of a felony offense as an adult
14 pursuant to state, federal or military law; [~~or~~]
15 (2) convicted as an adult pursuant to youthful
16 offender or serious youthful offender proceedings under the
17 Children's Code or pursuant to comparable proceedings under
18 state, federal or military law; or [~~a sex offender~~]

19 (3) required to register as a sex offender
20 pursuant to the provisions of the Sex Offender Registration and
21 Notification Act;

22 D. "department" means the department of public
23 safety;

24 E. "DNA" means deoxyribonucleic acid as the basis
25 of human heredity;

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1 F. "DNA identification system" means the DNA
2 identification system established pursuant to the DNA
3 Identification Act;

4 G. "DNA oversight committee" means the DNA
5 identification system oversight committee;

6 H. "DNA records" means the results of DNA testing
7 and related information;

8 I. "DNA testing" means a forensic DNA analysis that
9 includes restriction fragment length polymorphism, polymerase
10 chain reaction or other valid methods of DNA typing performed
11 to obtain identification characteristics of samples;

12 J. "fund" means the DNA identification system fund;

13 K. "missing persons DNA identification system"
14 means the missing persons DNA identification system established
15 by the DNA Identification Act;

16 L. "sample" means a sample of biological material
17 sufficient for DNA testing; and

18 M. "sex offender DNA identification system" means
19 the sex offender DNA identification system established by the
20 DNA Identification Act."

21 SECTION 2. Section 29-16-4 NMSA 1978 (being Laws 1997,
22 Chapter 105, Section 4, as amended) is amended to read:

23 "29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--
24 [~~TRANSFER TO OTHER LAW ENFORCEMENT AGENCY~~] HEAD--LOCATION--
25 WRITTEN AGREEMENT.--

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1 ~~[A. The administrative center shall be an~~
2 ~~appropriate unit of the department or such other qualified New~~
3 ~~Mexico law enforcement agency as the secretary of public safety~~
4 ~~may designate in accordance with this section that meets the~~
5 ~~requirements for participation in the national DNA index~~
6 ~~system.~~

7 B.] A. The administrative center shall:

8 (1) establish and administer the DNA
9 identification system. The DNA identification system shall
10 provide for collection, storage, DNA testing, maintenance and
11 comparison of samples and DNA records for forensic and
12 humanitarian purposes. Those purposes shall include generation
13 of investigative leads, statistical analysis of DNA profiles
14 and identification of missing persons and unidentified human
15 remains. Procedures used for DNA testing shall be compatible
16 with the procedures the federal bureau of investigation has
17 specified, including comparable test procedures, laboratory
18 equipment, supplies and computer software. Procedures used
19 shall meet or exceed the provisions of the federal DNA
20 Identification Act of 1994 regarding minimum standards for
21 state participation in CODIS, including minimum standards for
22 the acceptance, security and dissemination of DNA records;

- 23 (2) coordinate sample collection activities;
24 (3) perform or contract for DNA testing;
25 (4) serve as a repository for samples and DNA

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1 records;

2 (5) act as liaison with the federal bureau of
3 investigation for purposes of CODIS;

4 (6) adopt rules and procedures governing:

5 (a) sample collection;

6 (b) DNA testing;

7 (c) the DNA identification system and
8 DNA records;

9 (d) the acceptance, security and
10 dissemination of DNA records; and

11 (e) communication between local, state
12 and federal law enforcement agencies, the corrections
13 department and local jails and detention facilities in order to
14 minimize duplicate sample collections from the same individual;

15 (7) provide training to jail and detention
16 facility personnel who are required to collect samples pursuant
17 to Section 29-3-10 NMSA 1978;

18 (8) be reimbursed for, pursuant to the DNA
19 Identification Act, the costs of sample collection and DNA
20 testing of samples taken for the purposes of the identification
21 of missing persons and unidentified human remains;

22 (9) establish and administer the missing
23 persons DNA identification system as a part of the DNA
24 identification system; and

25 (10) establish and administer the sex offender

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1 DNA identification system as part of the DNA identification
2 system.

3 ~~[G. The secretary of public safety may designate,~~
4 ~~pursuant to a joint powers agreement, the crime laboratory of~~
5 ~~the police department for the largest municipality in a class A~~
6 ~~county having a population of more than two hundred fifty~~
7 ~~thousand at the most recent federal decennial census to act as~~
8 ~~the administrative center.~~

9 ~~D. The secretary of public safety may designate,~~
10 ~~pursuant to a joint powers agreement, any other law enforcement~~
11 ~~agency to act as administrative center upon recommendation of~~
12 ~~five voting members of the DNA oversight committee.]~~

13 B. The law enforcement agency where the
14 administrative center is located shall select the head of the
15 administrative center with the approval of six members of the
16 DNA oversight committee. The head of the administrative center
17 shall manage the operations of the administrative center and
18 shall have the education and experience to meet or exceed the
19 requirements for a technical leader or a CODIS administrator
20 pursuant to the federal bureau of investigation's quality
21 assurance standards.

22 C. The administrative center shall be located at
23 the crime laboratory of the law enforcement agency for the
24 largest municipality in a class A county having a population of
25 more than five hundred thousand at the most recent federal

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1 decennial census. If a relocation of the administrative center
2 is required for continued compliance with the provisions of the
3 DNA Identification Act, the DNA oversight committee shall
4 designate any future locations of the administrative center
5 upon approval of six voting members of the committee.

6 D. The DNA oversight committee shall enter into a
7 written agreement with the law enforcement agency where the
8 administrative center is located and may designate the attorney
9 general to enter into the agreement on its behalf and with its
10 approval."

11 SECTION 3. Section 29-16-5 NMSA 1978 (being Laws 1997,
12 Chapter 105, Section 5, as amended) is amended to read:

13 "29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND
14 DUTIES.--

15 A. The "DNA identification system oversight
16 committee" is created. The DNA oversight committee shall be
17 composed of nine voting members as follows:

18 (1) a scientific representative from the
19 department crime laboratory appointed by the secretary of
20 public safety;

21 (2) a scientific representative from the crime
22 laboratory of the police department for the largest
23 municipality in a class A county having a population of more
24 than two hundred fifty thousand at the most recent federal
25 decennial census;

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- 1 (3) the secretary of corrections or the
2 secretary's designated representative;
- 3 (4) the state medical investigator or the
4 investigator's designated representative;
- 5 (5) the attorney general or the attorney
6 general's designated representative;
- 7 (6) the president of the district ~~[attorneys]~~
8 attorneys' association or the president's designated
9 representative;
- 10 (7) the chief public defender or the chief
11 public defender's designated representative;
- 12 (8) the president of the New Mexico criminal
13 defense lawyers association or the president's designated
14 representative; and
- 15 (9) the head of the administrative center or
16 the head's designated representative.

17 B. The DNA oversight committee shall adopt rules
18 and procedures regarding the administration and operation of
19 the DNA identification system.

20 C. The administrative center shall review and make
21 recommendations to the DNA oversight committee regarding rules
22 and procedures for the administration and operation of the DNA
23 identification system.

24 D. The DNA oversight committee shall oversee the
25 establishment and administration of the missing persons DNA

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1 identification system as part of the DNA identification system.

2 E. The DNA oversight committee shall adopt rules
3 and procedures regarding the administration and operation of
4 the missing persons DNA identification system as part of the
5 DNA identification system.

6 F. The DNA oversight committee shall oversee the
7 establishment and administration of the sex offender DNA
8 identification system as part of the DNA identification system.

9 G. The DNA oversight committee shall adopt rules
10 and procedures regarding the administration and operation of
11 the sex offender DNA identification system as part of the DNA
12 identification system.

13 H. The DNA oversight committee shall designate and
14 approve the location of the administrative center as provided
15 in Section 29-16-4 NMSA 1978."

16 SECTION 4. Section 29-16-11 NMSA 1978 (being Laws 1997,
17 Chapter 105, Section 11) is amended to read:

18 "29-16-11. ASSESSMENT ~~[OF]~~--COLLECTION--DNA FEE---~~[On and~~
19 ~~after the effective date of the DNA Identification Act]~~

20 A. When a covered offender is convicted, the court
21 shall assess a DNA fee of one hundred dollars (\$100) in
22 addition to any other fee, restitution or fine. ~~[The fee shall~~
23 ~~be deposited in the fund.]~~ The corrections department shall
24 collect the DNA fee from the covered offender for deposit in
25 the fund.

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1 B. When a covered offender is transferred to New
2 Mexico from another state pursuant to an interstate compact,
3 the corrections department shall assess and collect a DNA fee
4 of one hundred dollars (\$100) for deposit in the fund."

5 SECTION 5. Section 29-16-13 NMSA 1978 (being Laws 1997,
6 Chapter 105, Section 13, as amended) is amended to read:

7 "29-16-13. DNA IDENTIFICATION SYSTEM FUND CREATED--
8 PURPOSES--PROCEDURE--ACCOUNTING.--

9 A. The "DNA identification system fund" is created
10 in the state treasury. [~~B.~~] The fund shall consist of all
11 money received by appropriation, gift or grant, all [~~money~~] DNA
12 fees collected pursuant to Section 29-16-11 NMSA 1978 and all
13 investment income from the fund.

14 [~~G.~~] B. Money and investment income in the fund at
15 the end of any fiscal year shall not revert to the general fund
16 but shall remain in the fund. [~~D.~~] Money and investment income
17 in the fund is appropriated to the [~~administrative center~~] DNA
18 oversight committee for expenditure in fiscal year 1998 and
19 subsequent fiscal years for the purposes [~~of the fund~~] provided
20 in this section.

21 [~~E.~~] C. The fund shall be used [~~for~~] to implement
22 the purposes of the DNA Identification Act, including paying
23 the expenses incurred by the administrative center and all
24 other reasonable expenses. [~~The administrative center may use~~]
25 Money in the fund may be used for loans or grants of money,

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1 equipment or personnel to any law enforcement agency,
2 correctional facility, jail, detention facility, judicial
3 agency, the public defender department or the office of the
4 [state] medical investigator, upon [~~recommendation~~] approval of
5 the DNA oversight committee.

6 D. The DNA oversight committee shall withdraw money
7 from the fund as necessary to implement the purposes of the DNA
8 Identification Act. Any amounts withdrawn from the fund shall
9 be deposited into a separate account, maintained by the law
10 enforcement agency where the administrative center is located,
11 to be used only for the purposes authorized in this section.

12 E. The law enforcement agency where the
13 administrative center is located shall annually certify to the
14 DNA oversight committee and the state treasurer's office that
15 all money withdrawn from the fund was expended in accordance
16 with this section and shall provide an accounting of the funds
17 as directed by the committee or the state treasurer's office.

18 F. Withdrawals from the fund shall be made upon
19 warrants drawn by the secretary of finance and administration
20 pursuant to vouchers issued and signed by the chair of the DNA
21 oversight committee or the chair's designee."

22 **SECTION 6. EFFECTIVE DATE.**--The effective date of the
23 provisions of this act is July 1, 2013.